

VZCZCXRO8506
PP RUEHROV
DE RUEHNR #1079/01 1531517
ZNY CCCCC ZZH
P 021517Z JUN 09
FM AMEMBASSY NAIROBI
TO RUEHC/SECSTATE WASHDC PRIORITY 9675
INFO RUCNIAD/IGAD COLLECTIVE

C O N F I D E N T I A L SECTION 01 OF 02 NAIROBI 001079

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DEPARTMENT FOR A/S CARSON, NSC FOR SENIOR DIRECTOR FOR
AFRICA GAVIN

E.O. 12958: DECL: 06/02/2039
TAGS: [PREL](#) [KDEM](#) [PHUM](#) [PINR](#) [PGOV](#) [KE](#)

SUBJECT: A/S CARSON AND NSC SENIOR DIRECTOR GAVIN'S MEETING WITH PM
ODINGA

Classified By: AMBASSADOR MICHAEL E. RANNEBERGER FOR REASONS 1.4 (B)
AND (D)

11. (C) Summary: In a May 12 meeting with Prime Minister Raila Odinga, Assistant Secretary for African Affairs (A/S) Johnnie Carson and National Security Council (NSC) Senior Director for Africa Michelle Gavin expressed deep concern over the lack of implementation of reforms in Kenya, and the direction in which the government seems headed. Odinga reviewed the various commissions established and claimed that, while the reform process is delayed, Kenya is on track. He was not optimistic about the prospects for establishing a local tribunal to prosecute perpetrators of post-election violence, and said "the Hague looks unavoidable." He focused his remarks on the unequal power sharing within the coalition government, and he cautioned that the entire process of reform is hinged on respect for the National Accord that established the coalition government. Pressed by NSC Senior Director for Africa Gavin for tangible accomplishments in the near term, the PM cited actions by the Interim Independent Electoral Commission (IIEC), a decision on how to handle post-election violence, implementation on police reform, proposals for judicial reform, and progress against corruption as benchmarks against which we can assess overall progress on reforms. End Summary

U.S. Concerns

12. (C) A/S Carson emphasized that the U.S. views Kenya as a close friend, a critical and vital partner, and a key component for stability and security in the region. Carson relayed that there is an enormous amount of concern in Washington that the coalition government is fragile, the Annan accords are not being fully implemented, and the process of reform has been extremely slow. Failure to implement the accords in a reasonable and rapid fashion could precipitate a crisis. NSC Senior Director for Africa Michelle Gavin underscored Carson's remarks, and she conveyed that President Obama is seized with the situation in Kenya and "deeply concerned" that progress on reform has stalled. The President has made clear, she said, that the U.S. will not conduct business as usual with anyone who does not support political reform or who supports violence. A "strategic political compromise" must be reached, said Carson.

Odinga's Response

13. (C) In a lengthy review of the political crisis that began with the failed elections of December 2007, Odinga said the manipulation of the presidential vote was the trigger for a chain reaction of events which illustrated that a peaceful united Kenya was nothing but a "facade." We had a stolen election, said Odinga, "our party won,

and we were cheated out of it." The grand coalition was formed because Odinga was willing to compromise, and he did not want a repeat of the post election violence of early 2008. Odinga cited the formation of the coalition, the ending of violence, the Waki and Kriegler commissions, the disbanding of the Electoral Commission, and the establishment of the Truth, Justice, and Reconciliation Commission and a police reform panel, and the constitutional review process now underway as positive steps. Still to be addressed are steps against corruption, judicial reform, and measures to improve opportunities for youth. Mirroring what Kibaki said (septel), Odinga stated, "We may be delayed but we are not very far behind."

¶4. (C) What has not been easy, said Odinga, is bringing the perpetrators of post-election violence to justice. The coalition tried to pass a bill to establish a Special Tribunal, but could not muster the required two thirds majority to pass a bill. Opponents who blocked the bill had two motivations: either they believed a local tribunal would be manipulated such that justice would not be served, or they were likely implicated themselves in post-election violence and they believed time and delay would work to their advantage if the case is referred to the International Criminal Court (ICC). Odinga and Kibaki have discussed the issue with Kofi Annan and will try again in the current session of Parliament to enact legislation to establish a local tribunal. However, Odinga acknowledged that there has been no change in Parliament, and therefore "the Hague looks unavoidable." The PM expressed support for a hybrid solution, wherein the ICC works in Kenya with local institutions to address lower level perpetrators, while "the big fish" go to The Hague.

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An Unequal Partnership

¶5. (C) The primary cause for tensions and anxiety within the coalition government, said Odinga, is the interpretation of the National Accord that created it. The PM has maintained there must be a 50/50 sharing of power in order for the coalition government to be truly effective. The Accord, a partnership of two partners enshrined in the constitution, establishes the position of Prime Minister as the coordinator and supervisor of government. Previously this function rested in the Office of the President, in the person of Francis Muthaura as the Head of the Public Service Commission. The problem, according to Odinga, is one of an "imperial presidency," wherein the Office of the President is resistant to devolving power. Odinga reviewed the recent scuffle in Parliament over the position of leader of government business, and remained adamant that as Prime Minister responsible for coordinating and supervising the work of government, he is the legitimate leader of government business. Odinga said he has met extensively with Kibaki in an effort to resolve the issue. Odinga said he has proposed that the Deputy Prime Ministers, Uhuru Kenyatta (Kibaki's party) and Musalia Mudavadi (Odinga's party), rotate the positions of leader of government business and head of the Parliament business committee. Kibaki reportedly is "thinking it over."

The Time to Act is Now

¶6. (C) A/S Carson said that, while it was unfortunate that political problems had to dominate the conversation, the fact remains that critical leadership is required to seek compromises and resolve the issues facing the nation. Serious political compromises must be reached regarding an end to impunity, the establishment of an independent electoral commission, constitutional, police, and judicial reform, and the time to act is now. Carson and Gavin cautioned that Washington's patience is not unlimited. Progress must be made, and it will not come through more commissions, said Carson, which will only lead to greater frustration and delay. "These issues must be resolved at a much more expeditious pace," Carson said. "There will be consequences for those who obstruct progress," Carson added.

¶7. (C) Asked by Gavin for specific examples of progress we can expect in the coming months, Odinga cited the following:

- electoral reform: the Interim Independent Electoral Commission will conduct two by-elections, and begin work to update the voter registry.
- post-election violence: a process for dealing with perpetrators of post-election violence will be agreed upon in the next one to two months: either the ICC or a local tribunal.
- police reform: a panel just established will have three months to produce a report, after which there will be immediate implementation.
- judicial reform: the new Minister of Justice has been asked to provide proposals within three months for the reform of the judiciary.
- corruption: within three months the Attorney General should be mounting some significant prosecutions that target corrupt practices.

However, the Prime Minister said, "tell the President that progress on all these reforms depends on [Kibaki] respecting the National Accord."

¶8. (U) This cable has been cleared by A/S Carson and NSC Senior Director for Africa Gavin.

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